NEPA and the Corps Emergency Actions

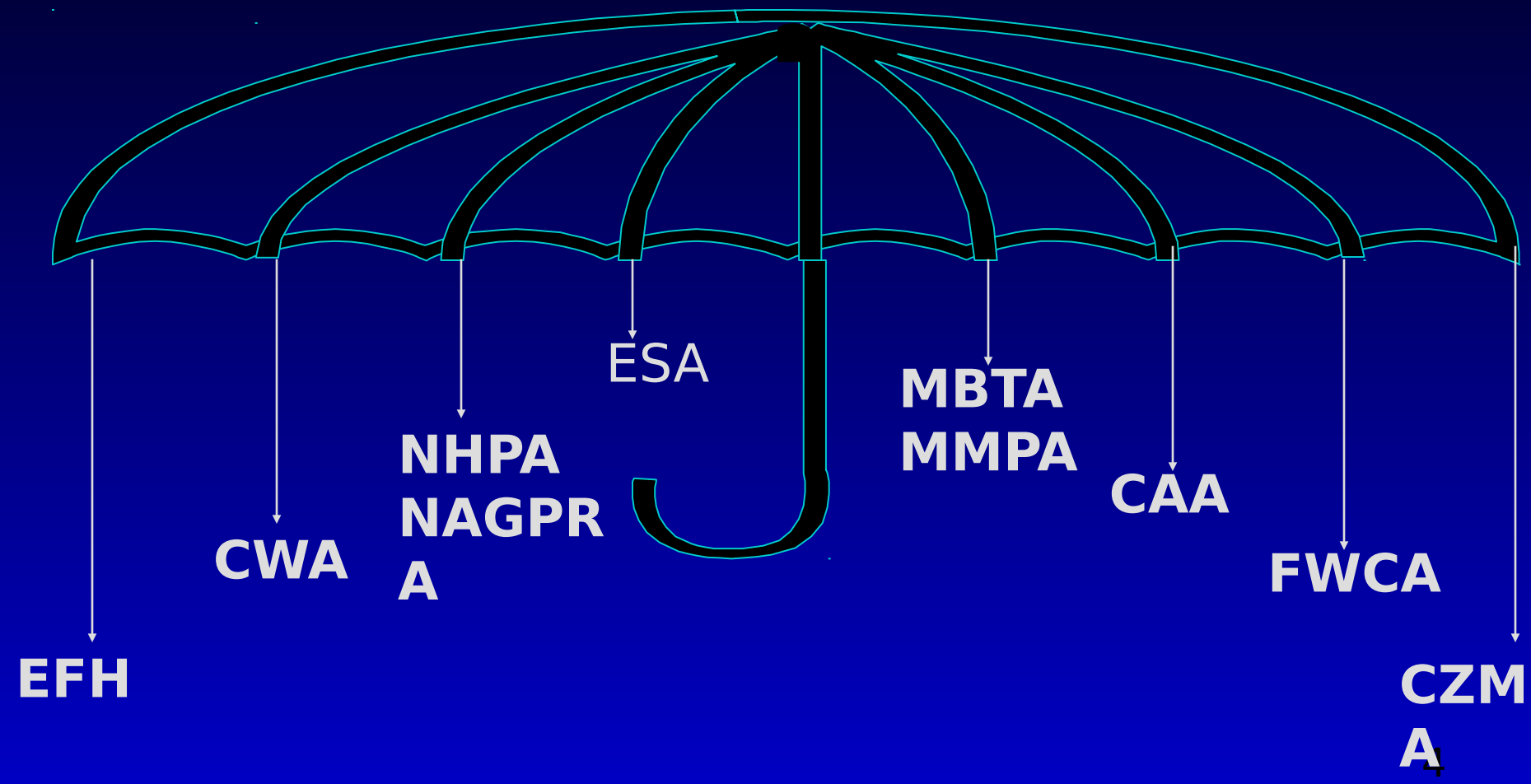
National Environmental Policy Act

- Signed into law by President Nixon on January 1, 1970
- Declared a national policy to protect the environment and created a Council on Environmental Quality (CEQ) in the Executive Office of the President
- Required that a detailed statement of environmental impacts be prepared for all major federal actions “significantly affecting the environment.”

National Environmental Policy Act

- Basic environmental policy for the nation
- Mechanism to identify and describe alternatives and their impacts, and possible ways to mitigate for those impacts
- Set up a process to disclose information on a proposed project and solicit comments.
- Federal actions are subject to a NEPA review

National Environmental Policy Ac



NEPA Process

Three types of documents could result from the NEPA process:

1. Categorical Exclusion (CatEx) - Minor, typically routine actions that are not expected to have environmental impacts

2. Environmental Assessment - small projects or those where impacts can be mitigated below a particular significance level

NEPA Process (cont.)

3. Environmental Impact Statement - document impacts of large and/or controversial projects where there are expected to be significant impacts

When is NEPA triggered?

Under Stafford Act, emergency response actions are exempt from NEPA's requirements (time constraints)

Examples:

- ✓ providing essential relief to victims
- ✓ managing disaster debris
- ✓ repairing or restoring public facilities damaged by the disaster

When is NEPA triggered?

- If the proposed emergency response activity has “significant” environmental impacts, then are you covered by an existing NEPA analysis or applicable exemption? (e.g., implementing pre-existing plans to redeploy vessels and aircraft).

When is NEPA triggered?

If there are “significant” environmental impacts and you are not already covered (e.g., unsorted disposal of debris at a specific site; permanent replacement of major facilities)

When is NEPA Triggered?

Council on Environmental Quality regulations allow for “emergency alternative arrangements” of NEPA requirements

When is NEPA triggered?

If the proposed emergency response activity does not have “significant” environmental impacts, then the “alternative arrangements” requirements does not apply (e.g.,. if your agency has a categorical exclusion that is appropriate to exclude further NEPA analysis)

When is NEPA triggered?

NEPA's environmental review requirements may, however, be applicable to long-term recovery projects (e.g. construction of new flood control mechanisms such as levees under PL-84-99).

The Big Three under NEPA for Emergency Operations

- ✓ Endangered Species Act (ESA)
- ✓ Clean Water Act (CWA)
- ✓ National Historic Preservation Act (NHPA)

Endangered Species Act

- Serves to identify species of plants and animals considered in danger of extinction
- Administered by U.S. Fish and Wildlife Society (USFWS) and National Marine Fisheries Service (NMFS)
- Triggered when “Federal Nexus”

Endangered Species Act

"Federal Nexus" when Federal Agency:

- ✓ Involved in constructing project
- ✓ Provides funds for project implementation
- ✓ Has regulatory jurisdiction

Endangered Species Act

Based on the effects of the project Federal Agency prepares:

- Biological Evaluation or Categorical Exclusion document
- Biological Assessment

National Historic Preservation Act

- Helps Federal agencies actions and programs ("undertakings") avoid unnecessary adverse effects on important historic properties such as buildings, archaeological sites, and other places
- Advisory Council on Historic Preservation (ACHP) reviews national historic preservation policies and develops uniform regulations and procedures to carry out the Act.
- Also ACHP reviews, resolves disputes about, and comments on the effects of specific agency undertakings on historic properties.

National Historic Preservation Act (cont.)

- State- and tribal-level government offices review Federal agency undertakings

- Chief officer is designated "State (or Tribal) Historic Preservation Officer" ("SHPO" or "THPO").

Clean Water Act

- Enacted to conserve and restore the quality of the nation's waterways
- Corps of Engineers was given the responsibility of issuing dredge and fill permits (Section 404 permits) for activities in "waters of the U.S“ (effectively all waters and wetlands)
- When the Corps constructs a civil works project, it does not issue permits to itself. Instead the Corps follows a process similar to the established permit process.

Clean Water Act (cont)

Under Corps regulatory functions, Division Engineer has authority to approve special processing procedures in emergency situations

Sample NEPA Timeframes

- ✓ **Signed CATEX – 3-4 Days**
- ✓ **EA's with Signed FONSI – 12-15 Days**
- ✓ **Turnaround on cultural resources field investigations – 2 Days**
- ✓ **Average time to issue task orders and field an archeology crew – 12 hours**
- ✓ **SHPO review and comments – 1-2 Days**

NEPA and Emergency Operations

- In Emergency Operations the role of the Corps for NEPA compliance is **under** FEMA
- FEMA's regs and NEPA interpretations apply, NOT the Corps (exceptions include PL 84-99 actions)

Environmental Liaison Officer (FEMA)

- Senior environmental/historic preservation (EHP) official in the Joint Field Office (JFO)

- Manages the EHP compliance component of a disaster operation and represents FEMA's interests with Federal, Tribal, and State EHP resource agencies and organizations

Environmental Liaison Officer (FEMA)

Each JFO is supported by a team of environmental specialists in the areas of hazardous materials, endangered species, wetlands, and the National Environmental Policy Act (NEPA).

Environmental Liaison Officer (FEMA)

Primary duties:

- ✓ Developing and implementing EHP action plans based on JFO priorities
- ✓ Managing and supervising EHP staff
- ✓ Coordinating with disaster programs to ensure EHP compliance

Note: Several ELOs may be deployed to a single disaster and serve as deputies under a primary ELO.

Conditions Which Allowed for Success

- ✓ Impacted district has contracts for Special Services in place
- ✓ Logistical support to offices such as SHPO
- ✓ All site visits included one archeologist and one biologist
- ✓ NEPA documentation specialists compiled all reports
- ✓ Expedited Procedures were in place
- ✓ Local knowledge of the project areas by district personnel

Special Problems and Constraints

- **Role of the Corps is under FEMA**
- Turnover of key personnel
- Lack of understanding of FEMA's interpretation of environmental regulations
- Lack of understanding of NEPA requirements in emergencies

Special Problems and Constraints (cont.)

- Shortage of qualified volunteers/employees for TDY (COE and FEMA)
- Relations with contractors
- Hostile and demanding public
- Living conditions for staff

Ineligible FEMA Assistance Applicants

Questions?